



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2011

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
Office of the City Attorney
City of Dallas
1500 Marilla Street Room 7BN
Dallas, Texas 75201

OR2011-03741

Dear Mr. Ernst:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 411715.

The City of Dallas (the "city") received a request for information relating to an investigation involving a named city employee. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied common-law privacy to records of an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court also held, however, that "the public

does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victim of and witness to the alleged sexual harassment must be redacted, and their detailed statements must be withheld. *See also* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation must ordinarily be released, except for information that would identify the victims and witnesses. In either event, the identity of the individual accused of sexual harassment is not protected from public disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978). We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

We find the submitted information is related to an investigation of alleged sexual harassment, so as to fall within the scope of *Ellen*. We also find the submitted information constitutes an adequate summary of the investigation. Thus, in accordance with *Ellen*, the submitted information is subject to disclosure, except for the identities of the victim and witnesses in the investigation. The city must withhold the information we have marked that identifies the victim and witnesses under section 552.101 of the Government Code in conjunction with common-law privacy and the decision in *Ellen*. Although you seek to withhold other information, which you have highlighted in yellow, on this basis, we find the remaining highlighted information does not identify the victim or the witnesses in the investigation. We therefore conclude the city may not withhold the remaining yellow-highlighted information under section 552.101 in conjunction with common-law privacy and *Ellen*.

You also contend other highlighted portions of the submitted information are protected by common-law privacy under section 552.101. Common-law privacy also encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). In this instance, the additional information you seek to withhold relates to the conduct of a supervisory city employee. As previously noted, information relating to public employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3

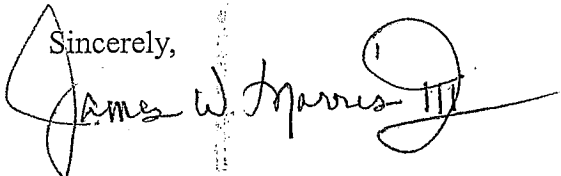
(1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (manner in which public employee's job was performed cannot be said to be of minimal public interest). We find the remaining information at issue is not highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude the city may not withhold any of the remaining highlighted information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked that identifies the victim and witnesses in the sexual harassment investigation under section 552.101 of the Government Code in conjunction with common-privacy and the decision in *Morales v. Ellen*. The city must release the rest of the submitted information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 411715

Enc: Submitted documents

c: Requestor
(w/o enclosures)